

COMMENTS

YUGOSLAVIA AND THE EUROPEAN ECONOMIC COMMUNITY: IS A MERGER FEASIBLE?

MATTHEW M. GETTER*

1. INTRODUCTION

Yugoslavia is a singularly unique nation. It first attracted the attention of international businesspersons and lawyers when, in 1967, it became the first socialist nation¹ to enact legislation permitting foreign investment in the form of joint ventures.² This action marked the beginning of Yugoslavia's efforts to promote closer commercial ties with the West. Such ties permitted the Yugoslavs to take advantage of the resulting influx of capital, skills and technology in order to further develop their own economy. Soon after, other Eastern European nations followed with joint venture legislation of their own.³ However, Yugoslavia's approach to foreign investment is markedly different from those of the nations which followed its lead.

Although Yugoslavia is a socialist nation, its economy is free from the centralized state planning characteristic of other Eastern European states. Basic decisions regarding production and distribution are left to the commercial enterprises themselves via a system of worker self-management.⁴ Workers make virtually all such decisions through various

* J.D., 1990, University of Pennsylvania Law School; B.S., 1987, University of Pennsylvania.

¹ See Buzescu, *Joint-Ventures in Eastern Europe*, 32 AM. J. COMP. L. 407, 408 (1984); Coronna, *Joint Ventures in Yugoslavia*, 11 KINGSTON L. REV. 266 (1981); Coughlin, *An Economic Analysis of Yugoslav Joint Ventures*, 17 J. WORLD TRADE L. 12 (1983); Comment, *Joint Ventures in Yugoslavia*, 18 J. WORLD TRADE L. 163 (1984).

² Law on Investment of Resources of Foreign Persons in Domestic Organizations of Associated Labor, July 10, 1967.

³ Romania enacted joint venture legislation in 1971; Hungary in 1972; Poland in 1976; and Bulgaria in 1980. See Buzescu, *supra* note 1, at 408-09.

⁴ For general explanations of the workings of the Yugoslav worker self-management system, see Buzescu, *supra* note 1, at 415-16; Goldstajn, *Yugoslav Foreign Trade Law: A General Survey*, 6 REV. SOCIALIST L. 325, 327-28 (1980); Sajko, *Enterprise*

organizations and committees. This system promotes a degree of economic flexibility that makes the promotion of closer ties with the West all the more feasible.

The legal climate in Yugoslavia is also conducive to further integration with the West. Its laws pertaining to contracts and conflicts of laws permit parties doing business in Yugoslavia the freedom to choose, within certain limitations, which nation's laws will govern their dealings. This same latitude is also given to parties to choose the applicable form of arbitration should arbitration be necessary. Yugoslav laws are quite amenable to the resolution of disputes through the arbitration process. There already exist various commercial agreements between Yugoslavia and the West - in particular with the European Economic Community - which demonstrate the extent to which Yugoslavia is on its way to integrating its economy with those of the West.

Yugoslavia would benefit from closer ties with Western Europe by virtue of the technology and management skills it would develop, and by the placement of its products in foreign markets.⁵ The Yugoslav economy, which has faltered and performed unevenly in recent years,⁶ would benefit from the economic development likely to follow a merger with the EEC. Individual Yugoslavs would benefit from EEC laws which allow great mobility for workers within the Community.⁷ The EEC would benefit from such a merger because of Yugoslavia's strategic position between the bulk of the Community's Member States, Turkey, and the Near East.⁸ A merger would allow the EEC to expand and diversify its economic base. The resulting strengthening of the Yugoslav economy would further serve to unify and strengthen the econo-

Organization of East European Socialist Countries - A Creative Approach, 61 TUL. L. REV. 1365, 1376-81 (1987); Scriven, *Joint Venture Legislation in Eastern Europe: A Practical Guide*,

21 HARV. INT'L L.J. 633, 640-42 (1980).

⁵ See Goldstajn, *The Relationship of Yugoslavia and the EEC*, 18 COMMON MKT. L. REV. 569, 570 (1981).

⁶ As of 1987, Yugoslavia's foreign debt was \$19 billion, its unemployment rate 15%, and its inflation rate 100%. See Comment, *The Yugoslav Gastarbeiter: The Guest Who Stayed For Dinner*, 8 NW. J. INT'L L. & BUS. 181, 187 (1987).

⁷ Freedom of worker mobility is a core principle of the Community. See Treaty Establishing the European Economic Community, Mar. 25, 1957, tit. III, ch. 1, arts. 48-51 (amended 1987), 298 U.N.T.S. 11 [hereinafter Treaty of Rome]. Maintaining the mobility of Yugoslav workers is a crucial economic need, because to require them to return to Yugoslavia for work would greatly worsen the unemployment situation in Yugoslavia. See generally Comment, *supra* note 6 (arguing that repatriation of Yugoslav guest workers from West Germany would be harmful to both countries). Presumably, the greater freedom to send Yugoslav workers abroad that would follow from a merger with the EEC would benefit the Yugoslav economy even more, as it would bring more foreign currency into Yugoslavia and lessen the problem of unemployment.

⁸ See Goldstajn, *supra* note 5, at 570.

mies of all the Community States.

This comment takes the position that the European Economic Community should soon open its doors again and admit Yugoslavia as its thirteenth member.⁹ The first section will describe the present legal environment in Yugoslavia regarding economic ties with the West. This examination will demonstrate that Yugoslavia is committed to the pursuit of further integration, and that many of the basic legal elements needed for Community admission either already exist or are only a step away. The second section will attempt to reconcile the Yugoslav need for economic, legal and political independence with the demands of the Community for extensive integration.

2. THE LEGAL ENVIRONMENT IN YUGOSLAVIA REGARDING ECONOMIC TIES WITH THE WEST

2.1. *Joint Ventures*

The most sophisticated and thoroughly analyzed aspect of Yugoslavia's economic ties with the West is the area of joint ventures. Yugoslavia's laws in this area have undergone significant changes since the passage of the original legislation in 1967.¹⁰ These changes have allowed foreign investors to own larger percentages of the joint ventures, to reap higher shares of the profits, and to have a greater degree of control over the operations of the ventures. The Yugoslav government's unwillingness to sacrifice the existing structure of its economy in order to effect such changes also reveals a particular strength of the Yugoslav effort to integrate with the West.

The goal of Yugoslavia and other Eastern European nations in encouraging foreign investment is to "modernize and accelerate economic development."¹¹ The hope is that such joint projects will allow the Yugoslav counterparts in these ventures to "gain access to the results of advanced Research and Development . . . hence speeding up the inflow of new technology."¹² For a developing nation such as Yugoslavia, the prospect of tapping into Western sources of technology and resources has provided a strong incentive to liberalize laws regarding foreign investment. Similarly, there are many reasons why a Western

⁹ The European Economic Community is presently comprised of the following nations: Belgium, Denmark, Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and the United Kingdom. See 1 THE EUROPA WORLD Y.B. 1989, 134.

¹⁰ See Artisien & Buckley, *Western Investment and the New Law in Yugoslavia*, 19 J. WORLD TRADE L. 522, 528 (1985).

¹¹ Buzescu, *supra* note 1, at 413.

¹² Artisien & Buckley, *supra* note 10, at 528.

enterprise would wish to invest in such joint ventures: protecting an existing market; countering increasing Yugoslav competition; and simply developing new market opportunities in Yugoslavia.¹³

The pressures on both sides to undertake these joint ventures prompted the Yugoslav government to enact its 1978 Foreign Investment Law.¹⁴ This law set out the rights of both foreign and domestic partners and established rules for the operations of these ventures within the Yugoslav system. The law first set out to guarantee certain specific protections for the ventures. Yugoslavia guarantees that foreign partners will be compensated for any governmental appropriation of real estate belonging to the joint venture,¹⁵ and that any regulatory changes affecting the rights of the foreign investor enacted after the execution of a joint venture agreement will not apply unless they are more favorable than the old regulations.¹⁶ These protections for foreign investors are codified in the Yugoslav Constitution.¹⁷ Such protections create a climate that is more conducive to foreign investment by "provid[ing] the foreign investor with a stable and predictable economic environment in which to operate the joint venture."¹⁸

Yugoslavia not only provides assurances to the foreign investors in joint ventures; it also treats joint ventures as it does other domestic enterprises. "Because the form of the joint venture is that of a normal organization of associated labor, [it] exercises the same rights as any other Yugoslav work organization."¹⁹ In this capacity, a joint venture can participate in the social compacts and social plans²⁰ that substitute for centralized state planning, and it can compete in the marketplace by selling to any domestic consumer.²¹ The equal treatment of joint ventures acts as an incentive to foreign investors by creating a greater measure of uniformity in applying the laws. Foreigners demand this higher degree of predictability in order to invest.

The unique aspect of foreign investments in Yugoslavia is that the forms which the investments take and the regulations governing them must conform to the already existing structure of the Yugoslav economy

¹³ See Comment, *supra* note 1, at 169.

¹⁴ Law on Investment of Resources of Foreign Persons in Domestic (Yugoslav) Organizations of Associated Labor (1978), 18 I.L.M. 230 (1978) [hereinafter 1978 Foreign Investment Law].

¹⁵ See Scriven, *supra* note 4, at 661.

¹⁶ However, this latter provision does not apply to taxation or "contributions to the social community." *Id.*

¹⁷ See Buzescu, *supra* note 1, at 435.

¹⁸ Scriven, *supra* note 4, at 662.

¹⁹ *Id.* at 654.

²⁰ See *id.* at 654 n.134.

²¹ See *id.* at 654.

and its present legal system. As mentioned earlier, the Yugoslav economy is based upon the concept of worker self-management.²² Workers make all decisions regarding the operations of the enterprise, including the production and distribution of goods, the allocation of profits, and the appropriate levels of reinvestment. On a macro scale, the entire economy is integrated not by centralized governmental plans, but rather through social compacts arrived at by various representatives of the business sector.²³

Other Eastern European nations,²⁴ in efforts to make their nations more attractive to foreign investors, have enacted joint venture laws that are alien to their present legal and economic systems.²⁵ Thus, businesspeople and governmental officials are unfamiliar with their own laws.²⁶ The result can only be general confusion and uncertainty among both domestic and foreign investors.

Yugoslavia, however, requires foreign investments in the form of joint ventures to operate within the existing Yugoslav system.²⁷ Specifically, joint ventures must conform to the worker self-management system that characterizes the Yugoslav economy. Although such a requirement may initially scare off potential foreign investors unfamiliar with the unique Yugoslav system, the demand for such conformity actually proves beneficial for investors. Joint ventures, because they must operate as any other enterprise, "form an integral part of the Yugoslav business community,"²⁸ and their integration into this system makes their subsequent chances for financial success all the better. "Perhaps this important aspect of the form and constitution of the Yugoslav joint venture entity has been a major reason for Yugoslavia's vastly superior

²² For discussions of the Yugoslav self-management system, see generally *supra* note 4.

²³ For discussions of Yugoslav Social Compacts, see generally *supra* note 20. For a brief discussion of the United States' classification of Yugoslavia as a non-state-controlled economy, see Cuneo & Manuel, *Roadblock to Trade: The State-Controlled Economy Issue in Antidumping Law Administration*, 5 FORDHAM INT'L L.J. 277, 289 n.64 (1981-82). "Yugoslavia is widely considered, and considers itself, to be a communist country with a market economy." *Id.* at 277 n.2. Reasons for classification as a non-state-controlled economy include direct exercise of decision-making power by those directly affected by the decisions; profit-oriented enterprises; "indicative" rather than binding national economic plans; and a market exchange rate for the dinar which provides a reliable reflector of its value.

²⁴ For descriptions of the joint venture laws of other Eastern European nations, see generally Buzescu, *supra* note 1.

²⁵ See Scriven, *supra* note 4, at 642.

²⁶ *Id.*

²⁷ See Buzescu, *supra* note 1, at 415-16; Coughlin, *supra* note 1, at 13; Scriven, *supra* note 4, at 640-42.

²⁸ Scriven, *supra* note 4, at 642.

record in attracting foreign investment."²⁹

While Yugoslavia requires foreign investment to conform to its existing system, the nation is not inflexible when it comes to attracting and accommodating foreign investment. The creation of a management body known as the Joint Business Board, and the enactment of amendments to the Joint Venture Laws, demonstrate this flexibility.

One of the most important concerns of foreigners investing in Yugoslavia was that the Yugoslav worker self-management system allowed the workers a very strong say in the operations of the joint venture. Foreign investors believed that Yugoslav requirements of domestic control limited their ability to manage the ventures effectively and left such control to the domestic partners and the workers.³⁰ The issue of managing joint ventures was treated somewhat ambiguously by the 1976 Foreign Investment Laws. The source of the ambiguity and occasional confusion was a struggle between foreign investors' desire to exercise strong influence in the management of the venture and the rights of Yugoslav workers to self-management³¹ as guaranteed by the Yugoslav Constitution.³²

The answer to the problem was the introduction into each joint venture entity of the Joint Business Board,³³ a committee composed of the foreign partners and their representatives and the domestic partners and workers.³⁴ The exact composition of each Business Board was to be determined through the negotiating process that created the joint venture itself, provided that the arrangement met with the approval of appropriate federal authorities.³⁵ The only restriction on the composition of the Board was that the General Director must have been nominated by the domestic partner.³⁶ Despite the apparent balance in management authority between foreigners and domestics that the creation of the Joint Business Board seemed to have achieved, in actual practice foreign investors often wielded greater influence. Studies indicate that in situations where disagreements arose, the Workers Council would

²⁹ *Id.*

³⁰ See Coughlin, *supra* note 1, at 22.

³¹ See Scriven, *supra* note 4, at 653. (Foreign workers employed by the joint enterprise have the same self-management rights as their Yugoslav counterparts.)

³² *Id.* at 652. These rights can be found in arts. 98-100 of the 1974 Yugoslav Constitution.

³³ See *id.*

³⁴ The Business Board has responsibility for many important matters including "financing, production, marketing, determination, and distribution of net income, and definition and number of working positions. . . . [But the workers must still] approve annual plans for wages, budget, profit, sales, and production." *Id.* at 652-53.

³⁵ *Id.* at 652.

³⁶ *Id.* at 653; Buzescu, *supra* note 1, at 428-29.

frequently accept the opinion of the "technical experts."³⁷ As the foreign investors and their representatives usually possessed the greater technical expertise, they exercised the most influence in management decisions. The 1984 Amendments served to clarify the Business Board's autonomy and to ensure the representation of the foreign investors' interests³⁸ that were "already informally operative in most joint ventures under the 1978 legislation."³⁹

In November 1984, the Yugoslav Parliament passed a series of amendments to the nation's joint venture laws.⁴⁰ These amendments responded to the perceived shortcomings of the 1978 Foreign Investment Laws. There have been various explanations for the failure of the 1978 Laws to attract more foreign investment. Some feel that the Yugoslav economic system did not generate enough profits for the foreign investors.⁴¹ Others have faulted the required minority positions of the foreign investors and extensive worker participation in management decision-making.⁴² Because the actual level of foreign investment did not meet Yugoslavia's expectations, Parliament enacted various amendments to address these areas of concern.

The 1978 Foreign Investment Laws stipulated that profits received from the joint venture's operations would be computed after deducting from revenues, among other things, an amount corresponding to "the expansion of the material basis of work."⁴³ If the expanded investments were financed by the foreign investor, the effect of this provision was to increase the profits of the domestic partner disproportion-

³⁷ Comment, *supra* note 1, at 167. (Artisien and Buckley found this to be true in 86% of the cases in their survey. They found the effective transfer of management decisions to the technical experts to be in great part a result of the increasing technical complexity of management decisions.)

³⁸ Artisien & Buckley, *supra* note 10, at 535 (specific measures to be found in Articles 15-17 of the Joint Venture Laws).

³⁹ *Id.*

⁴⁰ Law on Investment of Resources of Foreign Persons in Domestic (Yugoslav) Organizations of Associated Labor, as amended November 27, 1984, 24 I.L.M. 315 (1984) [hereinafter 1984 Amendments].

⁴¹ See Coughlin, *supra* note 1, at 21 (referring to 1972 doctoral dissertation by Huff, who faulted the Yugoslav legislation for several reasons: 1) it restricted the foreign investor's rights as to ownership, 2) a low real profit rate because of taxes, inflation, devaluation and reinvestment requirements, 3) foreign exchange restrictions preventing profit and capital repatriation, 4) the Yugoslav enterprise was inflexible, and 5) foreign exchange and import controls raised doubts about the availability of certain inputs).

⁴² See *id.* (Discussing Gupta's studies, which concluded that six factors were causing the decreased investment. Besides the two mentioned, the other four were: 1) prohibitions against certain aspects of wholly-owned subsidiaries, 2) foreigners' fears and ignorance concerning Yugoslav legislation, 3) low profit rates, and 4) export requirements and nonconvertibility of the dinar hindering profit repatriation.).

⁴³ Coronna, *supra* note 1, at 268-69.

ate to the size of its contribution to the investment.⁴⁴ As a result, a ceiling was placed on the profits to be made by the foreign investor.⁴⁵ The 1984 Amendments addressed this problem by removing these profit ceilings.⁴⁶ Allowing the foreign investors to earn a more equitable share of the profits will tend to encourage investment, which can only aid the development of the Yugoslav economy and further economic ties between Yugoslavia and the West.

Another limitation imposed by the 1978 Foreign Investment Laws pertained to the allowable percentage of foreign ownership of the joint venture. In general, foreigners were not permitted to own greater than forty-nine percent of the venture's equity.⁴⁷ Certain exceptions were made, however, if the industry of which the joint venture was a part "[was] of special interest for the development of a particular branch of the economy."⁴⁸ The 1984 Amendments lifted from forty-nine percent the maximum share of foreign ownership,⁴⁹ allowing foreigners to invest more liberally. Presumably, it will be easier for a Western investor to find domestic Yugoslav partners (i.e., not necessarily partners able to provide a majority of capital investment) and thus to invest more money in these joint ventures.

There are other provisions of the 1984 Amendments which make investing in Yugoslavia more attractive. First, new procedures regarding the processing of applications for permission to create a joint venture have quickened the approval process.⁵⁰ Second, Sections 8 and 10

⁴⁴ See *id.* at 269.

⁴⁵ See *id.* at 272.

⁴⁶ See Artisien & Buckley, *supra* note 10, 534-36 (Artisien and Buckley write that although the removal of such profit ceilings is an attractive measure for foreign investors, a problem still remains with the nonconvertibility of the dinar due to foreign exchange restrictions. The lifting of such restrictions and the general health of the Yugoslav economy would act to more fully liberalize the joint venture laws in the area of profit maximization.).

⁴⁷ See Jansen, *Western Investment in State-Controlled Economies: Establishment of Joint Ventures in Eastern European Countries*, 5 N.C.J. INT'L L. & COM. REG. 507, 511 (1980).

⁴⁸ *Id.* (quoting from Article 1 of the 1978 Joint Venture Laws).

⁴⁹ See Artisien & Buckley, *supra* note 10, at 535 (Artisien and Buckley argue that this change is more cosmetic than substantial, having only a psychological effect on potential investors. The reason for this is that the minority ownership requirement did not constrain foreign investors who did not increase their risk capital ownership to the legal maximum, as was encouraged by the Yugoslav authorities.); see also Comment, *supra* note 1, at 168 (Author discusses results of survey indicating that the 49.9% maximum ownership level didn't really affect the investment decisions of foreign investors).

⁵⁰ Article 50 requires the Federal Committee for Energy and Industry to inform applicants of its decision within 60 days of receipt of the application. Also, unsuccessful applicants may, under this amended provision, appeal this decision to the Federal Government. See Artisien & Buckley, *supra* note 10, at 534.

make it easier for investors to borrow money to finance their ventures.⁵¹ Third, amended Article 21 eases the tax burden on the foreign partner.⁵² There are also a number of other provisions in the amendments designed to make Yugoslavia a more attractive place to invest.⁵³

The development of these Yugoslav laws pertaining to foreign investments in the form of joint ventures demonstrates the Yugoslav government's commitment to further economic ties with the West. Its method of integrating foreign investment into its existing economic structure and legal system give an element of stability to such ties and make the prospect of further and more complete integration all the more feasible.

2.2. *Freedom of Contract*

The legal infrastructure of the Yugoslav economy permits enterprises to contract freely with other parties as they wish. The Obligations Act⁵⁴ provides enterprises with a great deal of latitude to decide with whom to contract and for what.⁵⁵ This, of course, is in keeping with the decentralized, self-management nature of the Yugoslav economy. The right of institutions to manage their own enterprises and to decide as well on the broader directions of the economy would be meaningless without the ability to contract unencumbered by other enterprises. Yet this freedom to contract is still limited by the requirement that the substance of the contracts be in keeping with requirements of the parties' own plans, as agreed upon in the Social Compact.⁵⁶ This proviso, however, is not very limiting when one considers that each enterprise has a say in the design of the plans to which it must adhere, and that the plans can, of course, be altered. The Obligations Act clearly underlines the market-oriented nature of the Yugoslav economy by specifically stating that "obligations shall be regulated within the framework of a *free traffic in goods and services* on the unified Yugoslav market."⁵⁷

⁵¹ Provided that the borrowing does not exceed the amount invested by the contracting parties. Also, it becomes easier to borrow from outside sources by allowing these lenders to become co-signatories to the joint venture contract. *See id.*

⁵² The foreign partner need not pay taxes unrelated to the joint venture, including taxes for defense, depreciation costs above statutory requirements, and some insurance premiums. *See id.* at 535.

⁵³ *See id.* at 534-36.

⁵⁴ Law of Obligation Relations, March 30, 1978 [hereinafter Obligations Act]. For a general discussion of Yugoslav obligations law, see generally S. PEROVIC, OBLIGACIONO PRAVO (1980) (English summary on pages 793-832).

⁵⁵ *See* Goldstajn, *supra* note 4, at 329.

⁵⁶ *See id.*

⁵⁷ *Id.* (emphasis in original).

The regulation of these contracts is on the level of private law.⁵⁸ Yugoslavia does not differentiate between domestic and international contracts in its application of the law in this area.⁵⁹

2.3. *Resolutions of Conflicts of Laws*

Yugoslav law takes a modern approach toward resolving issues involving conflicts of laws.⁶⁰ The resolution of these conflicts is based on the Yugoslav Private International Law Act.⁶¹ The Yugoslav law follows the widely accepted practice of allowing the contracting parties (when one of them is Yugoslav) to choose by which nation's law their contract will be interpreted.⁶² The only restrictions on this choice of law are that it be made for lawful purposes⁶³ and that the application of the chosen law not run contrary to Yugoslav public policy.⁶⁴

The latitude given the contracting parties by these provisions facilitates the initiation and maintenance of business ties with Yugoslav enterprises. This aspect of the Yugoslav laws would be quite compatible with the requirements of further economic integration with the Community that a merger with the EEC would necessitate.

There are no specific provisions in the Private International Law Act regarding a court's acceptance of choices of law that are implicit in the contract.⁶⁵ Therefore, it is for a court to decide whether the claims of such an implied choice are valid.⁶⁶ In the past, courts have accepted the claimed tacit choice if the behavior of the parties indicated that they both intended the application of a specific law.⁶⁷ This judicial discretion and deference permits a certain degree of flexibility in the administration of laws which potential foreign investors would find attractive.

⁵⁸ See *id.* at 330; Goldstajn, *supra* note 5, at 577. See also Goldstajn, *Yugoslav Foreign Trade Law: A General Survey*, 6 REV. SOCIALIST L. 325, 330 (1980) (The legal basis for the private law nature lies in the Basic Principles of Obligations Act. These principles are the following: 1) free regulation of obligations, 2) equality of parties to obligations, 3) the duty to perform obligations, 4) the directory character of the Act's provisions, and 5) the application of trade usages).

⁵⁹ See Goldstajn, *supra* note 4, at 330. ("The same rules apply to both kinds of transactions.")

⁶⁰ See Sarcevic, *The Yugoslav Private International Law Act*, 33 AM. J. COMP. L. 283 (1985).

⁶¹ Yugoslav Private International Law Act, July, 1982 (translated in 2 NETH. INT'L L. REV. 222 (1983)).

⁶² See Sarcevic, *supra* note 60, at 292; Goldstajn, *supra* note 4, at 339; Goldstajn, *supra* note 5, at 577.

⁶³ See Goldstajn, *supra* note 4, at 339.

⁶⁴ See *id.*; Sarcevic, *supra* note 60, at 285-86.

⁶⁵ See Sarcevic, *supra* note 60, at 292.

⁶⁶ See *id.*

⁶⁷ See *id.*

2.4. *Amenability to International Arbitration*

Yugoslav law is quite amenable to the submission of matters to the arbitration process for the resolution of international legal disputes. Yugoslavia is a party to numerous arbitration conventions, including the Geneva Convention of 1927, the Geneva Protocol of 1923, the European Convention of 1961, and the Washington Convention of 1965.⁶⁸ Yugoslav enterprises may choose from several forms of international commercial arbitration, such as the Foreign Trade Arbitration in Belgrade, an *ad hoc* court of arbitration in Yugoslavia, or an institutional or *ad hoc* arbitration tribunal abroad.⁶⁹ The only restriction that the law imposes with respect to the choice of arbitrators is that there must be an uneven number selected.⁷⁰

As with the Yugoslav approach to conflicts of laws, the flexibility accorded enterprises to choose the applicable laws for their contracts serves as somewhat of an inducement—or at least does not act as a deterrent—for foreign investment.⁷¹ Were further integration between Yugoslavia and the Community to occur, the existing Yugoslav laws in these areas would require little change.

2.5. *Existing Yugoslav-EEC Trade Agreement*

Aside from Yugoslavia's development of a legal framework that would be compatible with further integration with Western Europe, Yugoslavia has already created a legal arrangement governing the economic relationship with the EEC: the Cooperation Agreement.⁷² The Cooperation Agreement covers the trade and exchange of both agricultural and industrial goods,⁷³ and allows for the expansion and intensification of economic cooperation between the two parties to the Agreement through diversification of their economic relations.⁷⁴

The Cooperation Agreement, however, does not mark the beginning of the economic relations between Yugoslavia and the EEC. Rather, it serves to further the economic integration that already exists. The Member States of the Community have traditionally ranked

⁶⁸ *Id.* at 295-96.

⁶⁹ Goldstajn, *supra* note 4, at 339; Goldstajn, *supra* note 5, at 577.

⁷⁰ Goldstajn, *supra* note 4, at 339; Goldstajn, *supra* note 5, at 577.

⁷¹ In most cases, London is chosen as the place of arbitration for shipping and insurance cases, Switzerland for *ad hoc* tribunals. See Goldstajn, *supra* note 5, at 578.

⁷² *Cooperation Agreement between the European Economic Community and the Socialist Federal Republic of Yugoslavia*, Apr. 2, 1980, 26 O.J. EUR. COMM. (No. L 41) 1 (1983) [hereinafter Cooperation Agreement].

⁷³ See Goldstajn, *supra* note 5, at 571.

⁷⁴ See *id.*

among Yugoslavia's most important trading partners.⁷⁵ Their economic contacts have progressed from the exchange of goods to the purchases of "technology, technological equipment, raw materials and semi-finished goods."⁷⁶ These ties have expanded to include Yugoslav purchases of foreign licenses, long-term co-production projects including production of mutual supplies of products and the respective component parts,⁷⁷ and business and technical cooperation consisting of "joint research, production for joint marketing, [and] development of new products."⁷⁸

The specifics of the Cooperation Agreement are designed to promote closer economic ties with the European Community while allowing for the specific needs of the developing Yugoslav economy. The Cooperation Agreement aims specifically at expanding Yugoslavia's bases for international economic contact from tourism and the exchange of goods to "higher forms in the international division of labour through . . . joint venture contracts and contracts on industrial co-operation."⁷⁹

The Cooperation Agreement sets out industry-specific goals which take into consideration the special needs of various sectors of the Yugoslav economy. It is clear that one of the goals regarding trade and exchange is to "ensur[e] a better balance and [to] eas[e] the conditions for the admission of Yugoslav products to the Community's market."⁸⁰ Regarding industry, however, the goal is to develop the Yugoslav economic infrastructure to the point where greater diversification is possible.⁸¹ In addition, the EEC will help to "promote technology transfer and to cooperate in the field of energy including the exploration and utilization of Yugoslavia's energy resources."⁸² In return for helping develop the Yugoslav economy, the European Economic Community was granted most-favored-nation status in its trade relations with Yugoslavia.⁸³

While designed to promote industrial development and closer economic ties, the Cooperation Agreement also takes into consideration the needs of both parties to protect themselves from economic harm caused

⁷⁵ See *id.* at 570.

⁷⁶ *Id.*

⁷⁷ *Id.* at 571.

⁷⁸ *Id.*

⁷⁹ *Id.* at 574 (This specific goal is found in article 4 of the Cooperation Agreement. Articles 1, 2 and 3 of the Agreement indicate that the objectives of the Agreement are to promote Yugoslavia's economic and social development, which complements Yugoslavia's efforts at its own development, while taking into account Yugoslavia's special objectives and priorities as set forth in its development plans. *Id.*).

⁸⁰ *Id.* (This is based on Article 14 of the Agreement).

⁸¹ See *id.*

⁸² *Id.* at 574-75.

⁸³ See Cooperation Agreement, art. 27, at 10.

by a number of potential problems. Those who oppose further integration might argue that the comparatively less-developed Yugoslav economy would not be able to withstand the strain of a heightened level of economic integration with Western Europe. They would argue that the underdeveloped production and technological capacities of Yugoslav industry, combined with its more volatile currency, would make Yugoslavia too much of an importing nation and stunt the maturation of its own economy. In the context of a pure free-trade arrangement, this would be a more legitimate concern. However, several provisions in the Cooperation Agreement recognize this problem and attempt to reconcile the less-developed state of the Yugoslav economy with the Yugoslav desire for closer economic ties with Western Europe.

The Cooperation Agreement contains several clauses which allow either party to take measures to protect their economies when serious imbalances occur. Article 29 permits Yugoslavia to introduce new trade laws with respect to the EEC nations (i.e., customs, taxes or quotas) if necessary to protect its processes of industrialization or development.⁸⁴ The Article stipulates, of course, that such measures should be those that "least harm the trade and economic interests of the Community."⁸⁵ In addition, Yugoslavia may prohibit or restrict imports or exports "by reasons of public morals, order and security, the protection of the health and lives of persons and animals . . . and the protection of industrial and commercial property."⁸⁶ This provision allows Yugoslavia a good deal of latitude in applying such protectionist measures to ensure the continued viability of its domestic industries, while still reaping the developmental benefits of international trade.⁸⁷

Article 36 of the Cooperation Agreement provides that in urgent situations involving the serious deterioration of a particular segment of its economy, the affected party may adopt protectionist measures.⁸⁸ A party may also enact such measures to intervene temporarily in special circumstances such as dumping or subsidies.⁸⁹ One additional circumstance permitting intervention is to rectify a significant imbalance of

⁸⁴ See Goldstajn, *supra* note 5, at 572.

⁸⁵ Cooperation Agreement, art. 29, para. 2, at 10.

⁸⁶ Goldstajn, *supra* note 5, at 573. See Cooperation Agreement, art. 34, at 11.

⁸⁷ Article 34 serves also to limit to a certain degree Yugoslavia's imposition of such protectionist measures. It requires that these measures must not be a form of arbitrary discrimination or a concealed means to enact trade restrictions designed to benefit only the Yugoslav economy. See Goldstajn, *supra* note 5, at 573.

⁸⁸ See *id.*

⁸⁹ See *id.* The parties may adopt such protectionist measures in an attempt to settle the situation, even without prior consultation. See Cooperation Agreement, art. 38, para. 2, at 11.

payments.⁹⁰

Thus, while the Cooperation Agreement is part of an effort to draw Yugoslavia closer to the European Economic Community through increased trade, it recognizes that the differences between the Yugoslav economy and those of the Community's Member States require special provisions to balance the inequities of a total free-trade agreement. This is the sort of approach to economic integration that would make a merger between Yugoslavia and the EC in the near future feasible. The Cooperation Agreement proves that such arrangements are indeed workable and should be pursued. Balancing the Yugoslav desire for increased international trade and development with the need for minimal protectionism would eventually create a Yugoslav economy that would be more diversified, better developed, and fully able to contribute strongly to the functioning of the Community.

3. THE LEGAL FIT OF YUGOSLAVIA INTO THE EEC

The overarching goal of the European Economic Community is to gradually move toward full economic integration of the Community's Member States⁹¹ "by establishing a common market and progressively approximating the economic policies of Member States."⁹² Full integration, however, necessarily requires the Member States to sacrifice certain degrees of autonomy in the economic and legal realms.⁹³

Economically, the Community seeks to eventually eliminate trade restrictions between and among nations,⁹⁴ as well as restrictions as to "freedom of movement for persons, services and capital."⁹⁵ The Treaty of Rome also calls for the Member States to adopt common policies in such areas as agriculture and transport.⁹⁶ Legally, the Community calls upon its members to sacrifice the jurisdiction of their courts in certain areas to the Community's judicial system.⁹⁷ Yugoslavia, because of its

⁹⁰ See Goldstajn, *supra* note 5, at 573. The other party must be informed of such restrictions. Periodic consultations must be held to discuss how to cancel the provisions as soon as conditions permit. See Cooperation Agreement, art. 40, at 11.

⁹¹ See generally Single European Act, Sept. 9, 1985, *reprinted in* TREATIES ESTABLISHING THE EUROPEAN COMMUNITIES 523 (abr. ed. 1987).

⁹² Treaty of Rome, art. 2.

⁹³ For a discussion of the effort to more closely coordinate the foreign policies of the Member States, see generally Coronna, *supra* note 1.

⁹⁴ See Treaty of Rome, art. 3(a) (calling for the elimination of customs duties and quotas on imports and exports of goods).

⁹⁵ See *id.* art. 3(c).

⁹⁶ See *id.* art. 3(d), (e).

⁹⁷ The procedures governing the Community's Court of Justice and its jurisdiction are set out in articles 164 to 188 of the Treaty of Rome. The Court has explicitly stated in *Costa v. Ente Nazionale per l'Energia Elettrica (ENEL)*, case 6/64 [1964]

unique socio-political foundation and its resulting economic structure, and because of the less-developed state of its economy, may be more reluctant to make all of the sacrifices needed to help achieve the desired integration. Whether Yugoslavia would be willing to take such steps, and whether the laws of the EEC would allow for such recalcitrance by one of its members, are major issues to be examined in evaluating the feasibility of Yugoslavia's joining the Community.

3.1. *The Primacy of Yugoslav Public Policy*

Yugoslavia has specific laws prohibiting the application of foreign laws that run contrary to Yugoslav public policy. This specific prohibition appears most saliently in Article 4 of the Yugoslav Private International Law Act of 1982.⁹⁸ This Article provides that "[t]he law of a foreign state shall not be applied if its application would be contrary to the basic principles of social organization laid down by the Constitution of"⁹⁹ Yugoslavia. Although this provision was designed for situations involving conflicts of laws in which contracting parties choose to apply to the contract laws of a foreign nation, the logic behind the provision indicates that it could be applied more broadly. In enacting this provision, Yugoslavia recognized the unique position in which it had placed itself. By encouraging closer economic ties with Western enterprises

E.C.R. 585, 3 Common Mkt. L. Rep. 425 (1964) that Community laws, as established by the Community and as interpreted by its courts, must be applied by national courts when conflicts of law arise. Clark, *Legal Principles of Non-Socialist Economic Integration as Exemplified by the European Economic Community*, 8 SYRACUSE J. INT'L L. & COM. 1, 20-21 (1980). Although some nations comply with this judicial theory, others find ways to circumvent the authority of the Community courts, either procedurally or through the interpretation of national constitutional provisions. See *id.* at 21. Some nations elect to apply constitutional provisions that specifically transfer jurisdiction to the Community's courts. Italian courts have upheld article 11 of the Italian Constitution which "enables Italy to consent equally with other states to limit its sovereignty 'in so far as this may be necessary to enable the creation of any organization assuring peace and justice among nations.'" *Id.* at 21-22. Greece amended its Constitution before it joined the Community so that paragraphs 2 and 3 of article 28 effectively transfer national powers to international agencies and limit the exercise of national sovereignty in particular areas. Evrigenis, *Legal and Constitutional Implications of Greek Accession to the European Communities*, 17 COMMON MKT. L. REV. 157, 159 (1980). Evrigenis writes that these provisions were indeed modeled on similar clauses in present Member States. See *id.* at 160.

It is likely, considering its demonstrated flexibility in sacrificing national sovereignty in international law, that Yugoslavia will similarly enact such constitutional provisions. Yugoslavia's willingness to allow contracting parties to choose the applicable law of contract, its liberal Private International Law Act, and its amenability to the resolution of disputes through international arbitration all attest to its readiness to sacrifice a certain degree of national sovereignty in order to further economic integration with the West.

⁹⁸ See *supra* note 61.

⁹⁹ See *id.* art. 4.

through the acceptance of the applicability of foreign laws, Yugoslavia exposed its less-developed economy to the laws, customs, and practices of nations with more sophisticated and highly-developed economies. In order to ensure the integrity and vitality of its unique socio-economic structure in the face of foreign influence, Yugoslavia had to ensure that certain key aspects of its law and public policy were not compromised. Thus, they enacted the provision concerning the primacy of their public policy.

Therefore, when faced with the possibility that the EEC would demand strict adherence to Community laws concerning the inviolability of the doctrine of unfettered free trade among Member States,¹⁰⁰ Yugoslavia may decide that the goal of preserving its system of worker self-management calls for a slower pace of economic integration. It is the possibility of such an impasse which requires an examination of the potential conflicts between Community laws and Yugoslavia's goals.

3.2. *EEC Laws Against Restricting Free Competition*

This conflict between domestic sovereignty and free trade appears frequently in the context of EEC rules regarding restrictions on competition. Article 85¹⁰¹ of the Treaty of Rome prohibits two or more eco-

¹⁰⁰ See *supra* note 94.

¹⁰¹ The text of article 85 reads as follows:

(1) The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;

(b) limit or control production, markets, technical development, or investment;

(c) share markets or sources of supply;

(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(2) Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

(3) The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

any agreement or category of agreements between undertakings;
any decision or category of decisions by associations of undertakings;
any concerted practice or category of concerted practices which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

monic enterprises from collaborating to restrict competition through such means as fixing prices, limiting or controlling production of investments, or sharing markets or sources of supply.¹⁰² By examining the Community's case law, one can begin to determine what constitutes prohibited collusion.

The courts that have addressed this issue have focused on two questions. First, they seek to determine whether there exists a strong degree of "economic unity"¹⁰³ between the enterprises in question. *Christian v. Nielson*,¹⁰⁴ a case involving parent-subsidiary interaction, held that enterprises that are so economically interdependent that there can be no fully independent decision-making by one of the enterprises does not violate Article 85. The court reasoned that such interdependence essentially necessitates a sort of economic cooperation that does not rise to the level of collusion between two or more enterprises. In *Béguelin Import Co. v. G.L. Import Export S.A.*,¹⁰⁵ the Court of Justice "strongly endorsed the Commission's reasoning in *Christian [v.] Nielson*."¹⁰⁶ It essentially focused on the degree of competition between the two enterprises in question in order to ascertain whether they themselves were actually capable of restricting competition.¹⁰⁷

The second question on which the courts focus is the existence of specific agreements between the enterprises to limit competition. In *Kodak*,¹⁰⁸ the Commission chose to look at the existence of such agreements as the basis for a determination of collusion, rather than following *Christian* and looking to the realities of the nature of economic interdependence.

Either approach toward this issue still presents a problem for Yugoslavia. Yugoslav enterprises, as discussed earlier, are independently managed and are free to make decisions regarding their operations. Therefore, the approach taken in *Christian* and *Béguelin* affords no protection. More importantly, the Yugoslavs might face a problem with

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

¹⁰² See Treaty of Rome, art. 85, §§ 1 (a-c).

¹⁰³ See generally Ward, *The Economic Unity Doctrine in the EEC: A Limited Exemption to Article 85 of the Treaty of Rome*, 9 FORDHAM INT'L L.J. 373.

¹⁰⁴ 12 J.O. Comm. Eur. (No. L 165) 12 (1969), translated in [1965-1969 Transfer Binder] Common Mkt. Rep. (CCH) ¶ 9308.

¹⁰⁵ 11 Common Mkt. L. Rep. 81 (1974).

¹⁰⁶ Ward, *supra* note 103, at 386.

¹⁰⁷ See *id.*

¹⁰⁸ 13 J.O. Comm. Eur. (No. L 147) 24 (special ed. 1970), translated in [1969-1973 Transfer Binder] Comm. Mkt. Rep. (CCH) ¶ 9378.

the *Kodak* approach because of their practice of creating Social Compacts. The Yugoslav system of Social Compacts might be perceived as a restriction on competition in violation of Article 85. As mentioned earlier, the Social Compacts are a form of cooperation among Yugoslav enterprises to achieve broad macroeconomic objectives. As no cases are directly on point, there is a question as to whether these general agreements violate Article 85. But, an analysis of both the nature of the Yugoslav Social Compacts and the logic behind Article 85 indicates that they do not constitute such violations.

Article 85 is intended to prevent companies from engaging in actions designed to restrict or distort competition within the Common Market.¹⁰⁹ This would obviously include behavior designed to change price levels or affect the supplies of goods. But the Act is designed to prohibit behavior intended by its participants to reap benefits for the enterprises engaged in the action. The relevant cases have all dealt with agreements where the enterprises in question sought to utilize a specific means that they knew would affect the market in a particularly advantageous way. However, the Yugoslav Social Compacts are much more general in nature. *Every* enterprise plays a role in their formulations, not just two or three. Therefore, aside from the sheer burden of designing a plan that would distort the Community market in order to benefit an *entire* Yugoslav industry, a court would have to find that the plan was specifically designed to benefit the entire Yugoslav nation, or at least one whole sector of the economy. Given the competitive nature of the Yugoslav economy, it seems unreasonable to expect that such an agreement would be desirable or even achievable.

Furthermore, because the Yugoslav Social Compacts are quite general in nature, they deal with the broadest sort of macroeconomic objectives for the economy as a whole. They establish broad directions of policy for all enterprises to follow. The decentralized and competitive nature of worker self-management necessitates the sort of independence for individual enterprises that is incompatible with a finding of collusion under Article 85.

3.3. *Permissibility of State Aids*

In its effort to promote free trade within the Community, the EEC has enacted laws restricting the ability of Member Nations to provide forms of aid or assistance to domestic corporations.¹¹⁰ Article 92(1) of

¹⁰⁹ See Treaty of Rome, art. 85(1).

¹¹⁰ One commentator lists some possible forms of state aid as reduced utility rates, supply of free land or buildings, free research or promotional assistance, exemption

the Treaty of Rome explicitly forbids "aid granted . . . in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods. . . ." ¹¹¹ This law is designed to better achieve the general EEC goal of integrating the European market through the elimination of all forms of trade restriction. ¹¹² Although such state aids do not explicitly set up restrictions or barriers to trade, they distort the normal functioning of free markets. This leads to a less efficient allocation of economic resources and can compromise the integrity and vitality of the Common Market. In addition, some state aids act to "raise trade barriers and produce unemployment and overcapacity in the industries of Member States." ¹¹³

The Court of Justice of the European Community recently expanded the scope of Article 93(2) of the Treaty of Rome, which gives the Court jurisdiction over cases involving state aids. In the case of *Compagnie Francaise de l'Azote (COFAZ) S.A. v. Commission*, ¹¹⁴ the Court held for the first time that a business enterprise may seek review before the Court of Justice of another nation's state aid law, even after it has already addressed the issue before the government of the other nation. ¹¹⁵ The resulting increased admissibility of state aid cases marks the Community's increased willingness to entertain such cases and "to consider a broad range of factors when determining the admissibility of individual complaints concerning Community measures." ¹¹⁶ Considering the need for aid to promote economic growth in some less-developed areas of the Yugoslav economy, the issue of the permissibility of state aids becomes an important consideration in evaluating the feasibility of a Yugoslav-EEC merger.

Article 92(2)(a) of the Treaty of Rome says that state aid based upon social or public welfare grounds are *per se* compatible with the Common Market. ¹¹⁷ A strong argument can be made that the provision allows for a flexible approach to providing assistance to individual con-

from anti-pollution regulations, financial contributions to capital equipment or interest costs, and reductions or refunds for taxes or social security payments. See Allen, *The New Standard for Admissibility in European Community State Aids Actions After COFAZ*, 10 FORDHAM INT'L L.J. 578, 579-80 n.7 (1987) (Discussing analysis from 3 H. SMIT & P. HERZOG, *THE LAW OF THE EUROPEAN ECONOMIC COMMUNITY* 5-572-73 (1986)).

¹¹¹ Treaty of Rome, art. 92(1).

¹¹² See Allen, *supra* note 110, at 579.

¹¹³ *Id.* at 595.

¹¹⁴ Case 169/84 [1986] E.C.R. 391, [1985-1986 Transfer Binder] Common Mkt. Rep. (CCH) ¶ 14,284.

¹¹⁵ See Allen, *supra* note 110, at 578.

¹¹⁶ *Id.*

¹¹⁷ See *id.* at 580 n.12.

sumers or by extension to enterprises which serve important social and economic functions. Additionally, Article 92(3)(a) of the Treaty of Rome considers state aid "to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment" as *per se* compatible with the Common Market. Thus, Yugoslavia, were it to join the Community, could continue to take measures designed to speed up growth in particularly underdeveloped areas of its economy.

3.4. Possibility of the EEC Excepting Yugoslavia from Certain Requirements of Membership

On a more general level, the European Economic Community has recognized that there frequently exist circumstances peculiar to certain Member States under which these states should not be held to adherence to particular rules. It is necessary in an organization of nations of disparate circumstances to make such allowances. Therefore, some common rules exempt certain states from conformity with these rules, either for temporary or unlimited periods of time.¹¹⁸ In the cases involving unlimited periods, these exceptions "are considered harmless because of their economic insignificance."¹¹⁹ There also exist such exceptions based upon political reasons.¹²⁰ Yugoslavia could receive certain exceptions on such political grounds because of the demands of its unique system of worker self-management.

While some exceptions are made explicitly to specific rules, another means of accommodating the various needs of the different states is to establish and apply different standards for each state based upon its special circumstances.¹²¹ One form of this approach involves establishing alternative means of compliance.¹²² A second method seeks to establish minimum standards, where the states are given the option of introducing more stringent standards in addition to the established base standards.¹²³ Finally, there are a number of provisions in the various

¹¹⁸ See Grabitz & Langeheine, *Legal Problems Related to a Proposed "Two-Tier System" of Integration Within the European Community*, 18 COMMON MKT. L. REV. 33, 36 (1981).

¹¹⁹ *Id.* An example of such an exception "can be found in the Sixth Council Directive on turnover taxes, [which excluded] certain territories of Denmark, Italy, and the Federal Republic of Germany." *Id.*

¹²⁰ An example is the Protocol on German Internal Trade in 1957. *See id.*

¹²¹ *See generally id.* at 37-38.

¹²² *See id.* at 37 (Grabitz and Langeheine give as an example the Fourth Council Directive on the annual accounts of certain kinds of companies which allows nations to choose between different layouts of balance sheets and profit and loss accounts.).

¹²³ *See id.* at 37 (Grabitz and Langeheine point out that these standards are frequently used in environmental protection legislation.).

treaties and agreements among the Community members exempting certain areas of state activity from EEC control.¹²⁴ The existence of such provisions allowing for the special circumstances of different states demonstrates that the EEC already has some experience with managing the difficulties of integrating a group of disparate nations.¹²⁵ Such flexibility would be necessary to accommodate the merger of Yugoslavia, with all of its unique needs.

4. CONCLUSION

Yugoslavia is presently in a good position to join the European Economic Community. Its geographic position makes it a desirable link between Western Europe, the Near East and the Southern Mediterranean. Since the goal of the EEC is to unify the markets of its Member States so as to make the resulting collective market more self-contained, it would make sense to extend membership to nations having something unique to offer. Yugoslavia offers potentially high levels of industrial and agricultural production.

Its admission would demonstrate the Community's flexibility and openness in accepting a nation with a unique market system. If the EEC ever considers expanding its membership beyond Western Europe - perhaps to include more oil-producing nations - the experience gained in encouraging Yugoslav integration would be most beneficial.

As for the process of integrating Yugoslavia into the Common Market, the economic and legal climates in Yugoslavia make a merger with the EEC quite feasible. It would initially require some special accommodations in order to eventually bring the Yugoslav economy to a greater degree of equality with the rest of the Community, but the Community already makes such accommodations for some of its present members.

The only question remaining is the political one. The Yugoslav government must decide whether a full merger would compromise its present form of government, and whether the increased exposure to the West - its politics and its culture - would add to the likelihood of this occurrence. Such a question is particularly relevant considering the re-

¹²⁴ See *id.* at 37-38 (Two examples of such provisions are Articles 48(4) and 55 of the Treaty of Rome regarding the rights of workers in the public service and the right of establishment, respectively.).

¹²⁵ Grabitz and Langeheine have proposed the idea of establishing a "Two-Tier System" of economic integration within the Community. They argue that a system of "formal inequality" would allow more flexibility and mutual assistance in helping Member Nations more efficiently. See generally Grabitz & Langeheine, *supra* note 118.

cent political and ethnic turmoil in Yugoslavia.

Until now, however, the Yugoslav government has demonstrated a strong commitment to the pursuit of closer ties with the West. Its efforts to attract foreign investment and its willingness to open its economy demonstrate a desire for further integration. The question now remains as to how far the Yugoslavs are willing to go.